

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No.

25

Filed by: Trial Section Merits Panel
Box Interference
Washington, D.C. 20231
Tel: 703-308-9797
Fax: 703-305-0942

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

THEODORE J. KOVACIC, RICHARD H. KAUFMAN,
MARTIN M. BOSTWICK, DONALD C. CRESCENZI,
WILLIAM H. VALLS, and THOMAS BUCACCIO

Junior Party,
(Reexamined Patent No. B1 5,188,250)¹,

v.

JOHN D. CULTER, DAVID V. HARMANN,
H. EUGENE HITE, Jr., JOHN P. REBHORN,
WADE J. GROETSCH, and
BERND HANSEN

Senior Party
(Application 08/872,462)².

Patent Interference No. 104,257

¹ Assigned to Kraft General Foods, Inc.

² Assigned to Kraft General Foods, Inc.

Interference No. 104,257
Kovacic et al. v. Culter et al.

Before McKelvey, Senior Administrative Patent Judge, Schafer
and Lee, Administrative Patent Judges.

PER CURIUM.

Judgment

A. Introduction

The interference is before a merits panel for entry of judgment.

B. Findings of Fact

1. This interference was declared by administrative patent judge Jameson Lee on October 27, 1998, with a single count.

2. At the time of declaration of this interference, the record owner of the junior party's involved patent was Kraft General Foods, Inc.

3. At the time of declaration of this interference, the automated PALM data base system of the Patent and Trademark office did not indicate any assignee for the senior party's involved application.

4. A telephone conference was held on November 10, 1998, between the administrative patent judge and counsel to

Interference No. 104,257
Kovacic et al. v. Culter et al.

both parties, in which the administrative patent judge was informed that ownership of both involved cases now reside in a common assignee, Kraft General Foods, Inc.

5. On November 10, 1998, the administrative patent judge issued an order granting the parties a seven day extension of time to file their respective real-party-of-interest papers, and requiring the filing of a copy of any assignment document most recently filed with the Patent and Trademark office which changes the assignee to an entity other than that indicated in the attachment to the notice declaring this interference.

6. On November 17, 1998, junior party filed a paper indicating that its real party of interest is Krafts General Foods, Inc.

7. On November 17, 1998, the senior party filed a paper indicating that its real party of interest is Kraft General Foods, Inc. as well, and furnishing a copy of an assignment document reflecting a transfer of ownership of its involved application from General Mills, Inc. to Kraft General foods, Inc.

Interference No. 104,257
Kovacic et al. v. Culter et al.

8. On December 17, 1998, the administrative patent judge issued an order for the common assignee to show cause why judgment should not be entered against the junior party. (Paper No. 6). In the same communication, the common assignee was advised that if in its opinion the junior party was the prior inventor then the senior party may concede priority to the junior party and that the evidence on which such opinion is based need not be filed.

9. The administrative patent judge granted an extension of time to January 31, 1999, for the common assignee to respond to the show cause order. (Paper No. 7).

10. On February 1, 1999, the junior party filed a paper entitled "Concession of Priority" in which it is stated: "Junior party Kovacic, et al. acknowledges that priority for the interference counts resides with the Senior party Culter, et al." (Paper No. 8).

11. The concession of priority is treated as a request for entry of adverse judgment under 37 CFR § 1.662(a). The request is granted.

Judgment

According, it is

Interference No. 104,257
Kovacik et al. v. Culter et al.

ORDERED that judgment as to the subject matter of count 1 is awarded to senior party Culter et al. and entered against junior party Kovacic et al.;

FURTHER ORDERED that THEODORE J. KOVACIC, RICHARD H. KAUFMAN, MARTIN M. BOSTWICK, DONALD C. CRESCENZI, WILLIAM H. VALLS, and THOMAS BUCACCIO, **are not** entitled to claims 1-33 of their involved Reexamined Patent No. B1 5,188,250, which correspond to count 1;

Interference No. 104,257
Kovacic et al. v. Culter et al.

FURTHER ORDERED that JOHN D. CULTER, DAVID V. HARMANN, H.
EUGENE HITE, Jr., JOHN P. REBHORN, WADE J. GROETSCH, and BERND
HANSEN, on this record, **are** entitled to claims 1, 3, 12-14,
18-20, 22, and 24-28 of their involved application 08/872,462,
which correspond to count 1.

Fred E. McKelvey, Senior)
Administrative Patent Judge)

)

)

)

)

Richard E. Schafer)
Administrative Patent Judge)

)

)

)

)

Jameson Lee)
Administrative Patent Judge)

)

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

Interference No. 104,257
Kovacic et al. v. Culter et al.

Via Federal Express

Counsel for junior party Kovacic et al.

Thomas R. Savoie
Krafts General Foods, Inc.
800 Westchester Avenue
Rye Brook, New York 10573

Counsel for senior party Culter et al.:

John A. O'Toole
General Mills, Inc.
No. 1, General Mills Boulevard
Minneapolis, Minnesota 55440